

## HUMAN SERVICES BOARD

# INTRODUCTION

## DISCUSSION

The petitioner is a seventy-nine year old Medicaid recipient who has been diagnosed for many years with fibromyalgia and MCS, conditions that cause pain throughout her body and reactions to medications and environmental

contaminants. Over the years she has received little relief from medications and various other forms of treatment.

The petitioner has found that deep tissue massage has been beneficial in relieving her pain and allowing her a greater range of motion. In connection with her application for Medicaid coverage under M108 (see infra), the petitioner has submitted statements from her current treating physician and other providers, including a chiropractor and a naturopath. She has also submitted extensive written statements of her own and materials and references she has gathered from publications and the Internet. There is no question that the Department has thoroughly reviewed and considered all these materials.

The petitioner's treating physician, when asked by the Department to describe extenuating circumstances that could be reasonably expected to produce serious detrimental health consequences if the petitioner was not provided these therapies, responded as follows:

Massage has been helpful in maintaining her mobility and lessening pain. I don't believe it is preventing "serious detrimental health consequences". It could potentially prevent consequences of impaired mobility which could be "serious".

He also stated that the petitioner had "improvement functionally" in the past with massage therapy, but that he

was unaware of any "specific literature" supporting the appropriateness of massage therapy to treat the petitioner.

In its decisions the Department determined that the petitioner has not shown that massage therapy has been proven to be efficacious in the treatment of fibromyalgia and that she has not exhausted alternative therapies covered by Medicaid, including comprehensive pain management evaluation and therapy. The petitioner insists she has tried virtually every alternative. However, in her testimony she stated that she categorically rejects the possibility of a psychological component to her problems and that this has placed her at odds with some of her doctors and family members.

ORDER

The decision of the Department is affirmed.

REASONS

The Medicaid regulations specifically exclude coverage of massage therapy for treatment of any condition. Medicaid Manual § M618.1. The petitioner does not challenge the overall validity of the above regulation.<sup>1</sup> Rather she has

---

<sup>1</sup> The Board has determined that the Department's decision not to cover massage therapy for Medicaid recipients was a valid policy decision insofar as it is not required by the federal Medicaid regulations. See Fair Hearing No. 15,645.

asked for an evaluation of her own situation pursuant to M108, a regulation adopted on April 1, 1999 which allows the Department to review individual situations pursuant to a set of criteria. M108 is reproduced in its entirety as follows.

In a decision that was affirmed by the Vermont Supreme Court, the Board extensively examined the criteria of M108 as it applies to another non-covered service, acupuncture, to treat fibromyalgia. Fair Hearing No. 16,223; aff'd; Cameron v. D.S.W., Vermont Supreme Court Docket No. 2000-339 (8/23/01). The Board held that M108 gives the Commissioner of DCF the authority to make exceptions for Medicaid coverage in cases which he or she deems meet certain criteria and that the Board may only overturn an M108 decision if it is shown to be arbitrary, unreasonable, or otherwise an abuse of discretion. In subsequent decisions the Board has applied this same analysis to requests for massage therapy. Fair Hearing Nos. 19,138 and 17,547.

In this case the petitioner has offered convincing anecdotal evidence (clearly believed by her doctors) that massage therapy has been effective in relieving her pain. However, what the petitioner has not shown is that massage therapy is a medically proven and effective treatment for fibromyalgia. It is also clear that the petitioner has not truly exhausted (as opposed to rejected) more traditional forms of treatment, such as comprehensive pain management. There is no indication that such an evaluation for and trial

of traditional therapies would be unduly expensive, intrusive, or in any way medically contraindicated.

As has been the case in several previous fair hearings on this issue, it may well be that massage therapy gives the petitioner relief from her symptoms and it may well be cheaper than conventional therapies. Thus, under the circumstances, it is not unreasonable that her doctors would support her request for coverage. However, as the Board has stated<sup>2</sup>:

It cannot be said that the Department's desire not to pay for these therapies because they have not been adequately proven in trials and because the practitioners are not working with or under the supervision of physicians is unreasonable. Therefore, even if the Board might reach a different conclusion under the evidence, the discretionary decision of the Commissioner must be upheld.

In affirming the Board's decision in one of the above cases the Supreme Court held that despite the petitioner's "personal experience with pain relief and the referrals from her care providers", in the absence of evidence as to "serious detrimental health consequences" and "the medical appropriateness and efficacy of the service (having) been demonstrated in the literature or by experts in the field" it could not be concluded that the Department's decision was "clearly erroneous". Cameron, Id. at p. 3.

---

<sup>2</sup> See Fair Hearing Nos. 16,233; 17,547, and 19,138.

In this case, the Department's decision makes clear that it stands willing to provide coverage for the petitioner to undergo an extensive evaluation to develop a comprehensive and coordinated medical approach to the treatment of her pain. If the petitioner was to avail herself of this, and it proved to be ineffective, the petitioner would be free to reapply for coverage for massage therapy. Until that time, however, in light of the foregoing the Department's decision in this matter must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

# # #